Filed 5/22/19 P. v. Cortez CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. OSCAR CORTEZ, Defendant and Appellant.	B285262 (Los Angeles County Super. Ct. No. TA142021)

APPEAL from a judgment of the Superior Court of Los Angeles County, Allen Joseph Webster, Jr., Judge. Affirmed and remanded with directions.

Alex Green, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Colleen M. Tiedemann and David W. Williams, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Oscar Cortez appeals from the judgment entered after a jury convicted him of, among other crimes, attempted deliberate and premeditated murder, aggravated mayhem, assault by means of force likely to produce great bodily injury, and child abuse, for which the trial court sentenced him to life in prison plus eight years. Cortez contends substantial evidence did not support the findings that the attempted murder was deliberate and premeditated and that he committed aggravated mayhem. He also argues the trial court committed several instructional errors. Finally, Cortez contends the sentencing minute order and abstract of judgment are incorrect. We agree with the last contention, remand with directions to correct the minute order and abstract of judgment, and otherwise affirm.

FACTUAL AND PROCEDURAL HISTORY

A. *Cortez Attacks His Girlfriend and Stabs a Bystander*

Cortez, his girlfriend, Erika, and their four-month-old son, Amir, lived with Cortez's mother, Ana. Another couple, Luis and Yolanda, also lived with Ana. Erika no longer wanted to live with Cortez, however, because he was violent with her and tried to keep her away from her family. So Erika decided to move out of Ana's house. One afternoon she packed a diaper bag for Amir and exchanged text messages with her mother, who agreed to drive to Ana's house and pick up Erika and Amir.

When Cortez realized Erika was attempting to leave with Amir, he became upset and told her she "wasn't going to leave nowhere," at least not with Amir. He took Erika's phone, saw the text messages she had exchanged with her mother, and began yelling at Erika. Erika was holding Amir outside the house when

Cortez rushed at her. Erika pushed him away, and he slapped her in the face, knocking her down onto a concrete surface with Amir still in her arms.

While Cortez struggled to take Amir from Erika, Ana came outside to stop the fight. When she told Cortez she was going to call the police, he took her phone out of her hand and put it in his pocket. As Ana began to hit Cortez with a broom, he took a swing at Erika and hit Amir. Erika managed to get Amir into a stroller, but Cortez pushed her away, picked up Amir, and started walking away, with Ana trying to stop him and grabbing at Amir.

At this point Ana called to Luis, asking him to come help her and to call the police. Luis ran outside, where Erika was now holding Amir (having somehow retrieved him from Cortez), and Ana again asked Luis to call the police. Cortez began to argue with Luis, telling him "not to get involved." Luis took out his phone and put it to his ear, and Cortez told him that, if he called the police, Cortez was "going to kill" him. Cortez pulled a knife from his pants pocket, opened it, and stabbed Luis in the torso, below the breast. As Luis turned away, Cortez sliced him across the torso, making a wound that would leave a raised, six-inch scar. Luis also raised his arm to try to protect himself, at which point Cortez stabbed him in the arm and twisted the blade, pulling out tendons and blood vessels. Luis testified at trial that, even after multiple surgeries on his arm, his hand was still "dead"' as a result of this wound: "I don't have any feeling. I can't move it. I can't do anything."

After Cortez stabbed Luis in the arm, Luis tried to flee to another house on the property, but Cortez followed him and stabbed him repeatedly from behind, in his armpit and lower back. Luis was eventually able to escape by running into the street, where he stopped a passing car and asked the driver to call 911. Cortez had stabbed Luis a total of five times.

Meanwhile, Erika had given Amir to Ana, who gave him to Yolanda, who took Amir into the house. But Cortez followed Yolanda, screaming at her to give him Amir. When Yolanda refused, Cortez punched her in the face, took Amir, and punched Yolanda again, leaving her "knocked out." Cortez fled with Amir out of the house and down the street. Erika ran after them until she met a police officer driving by, stopped him, and told him what had happened. The officer told her to stay where she was, and drove after Cortez. Shortly afterward the police detained Cortez, who initially refused to cooperate or hand over Amir, but eventually surrendered him to the officers.

B. *The Jury Convicts Cortez of Numerous Crimes*

The People charged Cortez with attempted premeditated murder (Pen. Code, §§ 664, 187),[1] inflicting corporal injury on the mother of his child (§ 273.5, subd. (a)), dissuading a witness from reporting a crime (§ 136.1, subd. (b)(1)), dissuading a(nother) witness by force or threat from reporting a crime (§ 136.1, subd. (c)(1)), child abuse (§ 273a, subd. (a)), assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4)), and aggravated mayhem (§ 205). The People alleged that, in committing the offenses of attempted murder and dissuading a witness by force or threat from reporting a crime, Cortez personally inflicted great bodily injury (§ 12022.7, subd. (a)) and personally used a deadly and dangerous weapon (§ 12022, subd. (b)(1)).

The jury found Cortez guilty of all charges and found true the allegations he inflicted great bodily injury and used a deadly and dangerous weapon. The trial court sentenced Cortez to life in prison, plus eight years: life in prison on the conviction for

---

[1] Statutory references are to the Penal Code.

attempted premeditated murder, four years for the enhancements on that conviction, and another four years on the conviction for assault. The court sentenced Cortez to various terms on his remaining convictions, to run concurrently with the term for the attempted premeditated murder. The court also stayed execution of some of the concurrent terms under section 654.

DISCUSSION

A. *Substantial Evidence Supported the Convictions for Attempted Premeditated Murder and Aggravated Mayhem*

Cortez contends substantial evidence did not support the jury's findings that his attempted murder of Luis was deliberate and premeditated and that, as required for the offense of aggravated mayhem, he specifically intended to maim Luis. There was substantial evidence, however, to support both findings.

1. *Standard of Review*

"Where, as here, a defendant challenges the sufficiency of the evidence on appeal, we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] A reviewing court must reverse a conviction where the record provides no discernible support for the verdict even when viewed in the light most favorable to the judgment below. [Citation.] Nonetheless, it is the jury, not the reviewing court, that must weigh the evidence, resolve conflicting inferences, and

determine whether the prosecution established guilt beyond a reasonable doubt. [Citation.] And if the circumstances reasonably justify the trier of fact's findings, the reviewing court's view that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment." (*People v. Hubbard* (2016) 63 Cal.4th 378, 392; see *People v. Cravens* (2012) 53 Cal.4th 500, 508 ["[t]he conviction shall stand 'unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction]"'"].)

2. *Attempted Deliberate and Premeditated Murder*

"Attempted murder requires the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing." (*People v. Lee* (2003) 31 Cal.4th 613, 623; accord, *People v. Pettie* (2017) 16 Cal.App.5th 23, 52.) "[U]nlike murder, attempted murder is not divided into degrees. The prosecution, though, can seek a special finding that the attempted murder was willful, deliberate, and premeditated, for purposes of a sentencing enhancement." (*People v. Mejia* (2012) 211 Cal.App.4th 586, 605; see § 664, subd. (a); *People v. Sedillo* (2015) 235 Cal.App.4th 1037, 1049 ["attempted murder is not a lesser included offense of attempted premeditated murder, but premeditation constitutes a penalty provision that prescribes an increase in punishment"].)

"'In this context, "premeditated" means "considered beforehand," and "deliberate" means "formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action."'" (*People v. Jurado* (2006) 38 Cal.4th 72, 118; see *People v. Herrera* (1999) 70 Cal.App.4th 1456, 1463, fn. 8 ["[w]e do not distinguish between attempted murder and completed first degree murder for

purposes of determining whether there is sufficient evidence of premeditation and deliberation"], disapproved on another ground in *People v. Mesa* (2012) 54 Cal.4th 191, 199.) """Premeditation and deliberation can occur in a brief interval. 'The test is not time, but reflection. "Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly."""" (*People v. Solomon* (2010) 49 Cal.4th 792, 812.)

The Supreme Court in *People v. Anderson* (1968) 70 Cal.2d 15, 26-27 (*Anderson*) "identified three categories of evidence relevant to determining premeditation and deliberation: (1) events before the murder that indicate planning; (2) a motive to kill; and (3) a manner of killing that reflects a preconceived design to kill. As we have repeatedly pointed out, and now reaffirm, '[t]he *Anderson* guidelines are descriptive, not normative. [Citation.]' [Citation.] They are not all required [citation], nor are they exclusive in describing the evidence that will support a finding of premeditation and deliberation." (*People v. Gonzalez* (2012) 54 Cal.4th 643, 663.)

Substantial evidence supported the finding Cortez's attempted murder of Luis was premeditated and deliberate. Cortez warned Luis he was going to kill him if he called the police, and when Luis did not put away his phone, Cortez reached into his pocket, pulled out a knife, opened it, and stabbed Luis in a vital area; when Luis fled, Cortez pursued and stabbed him three more times. Cortez's warning and the time and effort it took him to retrieve and open his knife are indicative of planning. (See *People v. San Nicolas* (2004) 34 Cal.4th 614, 658 ["[t]he act of planning—involving deliberation and premeditation—requires nothing more than a 'successive thought[ ] of the mind'"]; *ibid.* [brief period between seeing the victim's reflection in a mirror and turning around to stab her was "adequate for defendant to have reached the deliberate and premeditated decision to kill

[her]"]; *People v. Felix* (2009) 172 Cal.App.4th 1618, 1626 ["preoffense words from the perpetrator's own mouth," including a threat to kill the victim, "shed light on the issue of premeditation"].) Cortez also had a motive for killing Luis: to stop him from calling the police. (See *People v. San Nicolas*, at p. 658 [defendant's motive to kill "credibly could have been that . . . it was necessary . . . to prevent [the victim] from informing the police"]; *People v. Felix*, at p. 1627 [defendant's "anger at the possibility that his wounding [another victim] might be reported to the police" showed motive indicative of premeditation].) And the manner of Cortez's attack—stabbing Luis after warning him, then running after him to continue stabbing him—reflected an attempt to follow through on a design to kill Luis. (See *People v. Concha* (2010) 182 Cal.App.4th 1072, 1090 [premeditation and deliberation were "readily apparent" from threatening to kill the victim during a confrontation and then chasing him down and repeatedly stabbing and beating him].)

Cortez argues his attempt to kill Luis was the result of "unconsidered and rash impulses" that left no room for the requisite reflection. In essence, he isolates each piece of evidence in the record (or most of them), considers it in a light favorable to him, and argues it does not "show [he] acted with reflection." But that is not the test. The test is whether, after viewing all the evidence "'in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" (*People v. Edwards* (2013) 57 Cal.4th 658, 715, italics omitted.) We cannot say no rational trier of fact could find beyond a reasonable doubt, based on the evidence, that Cortez's attempt to murder Luis was premeditated and deliberate.

3. *Aggravated Mayhem*

"In California, '[a] person is guilty of aggravated mayhem when he or she unlawfully, under circumstances manifesting extreme indifference to the physical or psychological well-being of another person, intentionally causes permanent disability or disfigurement of another human being or deprives a human being of a limb, organ, or member of his or her body.' (§ 205.) . . . [T]his definition makes aggravated mayhem a specific intent crime, such that conviction requires proof beyond a reasonable doubt 'that the defendant acted with the specific intent to cause a maiming injury.'" (*People v. Manibusan* (2013) 58 Cal.4th 40, 86; see *People v. Szadziewicz* (2008) 161 Cal.App.4th 823, 831 ["[a]ggravated mayhem requires proof the defendant specifically intended to maim—to cause a permanent disability or disfigurement"].)

"'Evidence of a defendant's state of mind is almost inevitably circumstantial, but circumstantial evidence is as sufficient as direct evidence to support a conviction.'" (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1055.) "'A jury may infer a defendant's specific intent from the circumstances attending the act, the manner in which it is done, and the means used, among other factors.' [Citation.] '[E]vidence of a "controlled and directed" attack or an attack of "focused or limited scope" may provide substantial evidence of' a specific intent to maim." (*People v. Szadziewicz*, *supra*, 161 Cal.App.4th at p. 831; accord, *Kirkpatrick v. McDowell* (C.D.Cal. Apr. 25, 2016, Case No. CV 14-8084 JFW (SS)) 2016 WL 3410205, at p. 12, fn. 17.) But "where the evidence shows no more than an 'indiscriminate' or 'random' attack, or an 'explosion of violence' upon the victim, it is insufficient to prove a specific intent to maim." (*People v. Quintero* (2006) 135 Cal.App.4th 1152, 1162.)

Cortez argues his attack on Luis was an "indiscriminate" "explosion of violence" that lacked any demonstration of a specific intent to maim. At least with respect to the knife attack on Luis's arm, however, there was substantial evidence of a specific intent to maim. Cortez did not simply stab Luis in his arm; rather, having stabbed the knife into Luis's arm, Cortez "twisted the knife" (or "made a curve") and "pulled [the] tendons out," along with blood vessels. Cortez's "controlled and directed" manner (*People v. Szadziewicz*, *supra*, 161 Cal.App.4th at p. 831) of injuring Luis, after the knife blade was in his arm, supported a reasonable inference Cortez specifically intended to maim him. That evidence, together with Luis's testimony about the loss of feeling and use of his hand, provided substantial evidence to support the conviction for aggravated mayhem. (See *People v. Rodriguez* (2009) 170 Cal.App.4th 1062, 1065 [defendant was guilty of aggravated mayhem where the victim "suffered cuts to tendons, ligaments, and arteries" of her hand and, after two surgeries, "could not feel her index finger" and "still suffered pain in her wrist"]; *People v. Quintero*, *supra*, 135 Cal.App.4th at p. 1163 [substantial evidence supported the defendant's conviction for aggravated mayhem where the "nerves and tendons of [the victim's] hands were so severely cut that he has lost any strength in them to be able to continue in his construction work"].)

B. *The Trial Court Did Not Commit Instructional Error*

Cortez contends the trial court erred in denying his request for two "pinpoint" instructions and a unanimity instruction on the count for aggravated mayhem. We review these rulings de novo. (See *People v. Waidla* (2000) 22 Cal.4th 690, 733 ["[w]hether or not to give any particular instruction in any particular case entails the resolution of a mixed question of law and fact that, we believe, is however predominantly legal," and

"[a]s such, it should be examined without deference"]; *People v. Johnson* (2009) 180 Cal.App.4th 702, 707 ["[w]e review defendant's claims of instructional error de novo"].) ""'[W]e must consider the instructions as a whole . . . [and] assume that the jurors are intelligent persons and capable of understanding and correlating all jury instructions which are given. [Citation.]'" [Citation.] "Instructions should be interpreted, if possible, so as to support the judgment rather than defeat it if they are reasonably susceptible to such interpretation."'" (*People v. Johnson*, at p. 707.) The trial court here did not err in declining to give the instructions Cortez requested.

1. *The Pinpoint Instructions*

At trial, in defense to the aggravated mayhem charge, Cortez argued he lacked the specific intent to maim Luis because he "attacked [Luis] indiscriminately and in a blind rage." In connection with that defense, Cortez requested two pinpoint jury instructions:

"1. Evidence that shows no more than an indiscriminate attack is insufficient to prove the required specific intent for aggravated mayhem. *People v. Park* [(2003)] 112 Cal.App.4th 61.

"2. Specific intent to maim may not be inferred[ ] solely from evidence that the injury actually inflicted constitutes mayhem; instead, there must be other facts and circumstances which support an inference of intent to maim rather than to attack indiscriminately. *People v. Assad* [(2010)] 189 Cal.App.4th 187."

The trial court denied the request, ruling the instructions were duplicative of CALCRIM No. 800. That instruction, as given by the trial court, provides in relevant part that, to prove the defendant guilty of aggravated mayhem, the People must prove "1. The defendant unlawfully and maliciously disabled or

disfigured someone permanently or deprived someone of a limb, organ, or part of his body; [¶] 2. That when the defendant acted, he intended to permanently disable or to disfigure the other person or deprive the other person of a limb, organ, or part of his body; [¶] AND [¶] 3. Under the circumstances, the defendant's act showed extreme indifference towards the psychological well-being of the other person." Cortez argues the court erred in denying his request for the pinpoint instructions.

"Pinpoint instructions "'relate particular facts to a legal issue in the case or 'pinpoint' the crux of a defendant's case.'" [Citation.] 'Upon proper request, a defendant has a right to an instruction pinpointing the theory of defense . . . if the theory proffered by the defendant is supported by substantial evidence' [citation], the instruction is a correct statement of law [citation], and the proposed instruction does not simply highlight specific evidence the defendant wishes the jury to consider [citation]. [¶] The trial court may properly refuse an instruction highlighting a defense theory if it is 'duplicative or potentially confusing.' [Citation.] '[W]here standard instructions fully and adequately advise the jury upon a particular issue, a pinpoint instruction on that point is properly refused.' [Citations.] Put another way, '[t]here is no error in a trial court's failing or refusing to instruct on one matter, unless the remaining instructions, considered as a whole, fail to cover the material issues raised at trial.'" (*People v. Jo* (2017) 15 Cal.App.5th 1128, 1173-1174.)

The instructions Cortez requested did not misstate the law (see *People v. Assad*, *supra*, 189 Cal.App.4th at p. 195), but they were essentially duplicative of CALCRIM No. 800. Taken together, the two instructions would have prohibited the jury from finding the defendant had the requisite intent for aggravated mayhem based solely on (1) "evidence that shows no more than an indiscriminate attack" or (2) "evidence that the

injury actually inflicted constitutes mayhem." CALCRIM No. 800 ruled out both possibilities by requiring the People to prove not only that the defendant inflicted a maiming injury, but that the defendant "intended to" inflict such an injury. To the extent the two instructions added anything of significance to CALCRIM No. 800, they did so by introducing the possibility that the evidence in the case, instead of showing an intent to maim, might show nothing more than an indiscriminate attack—that is, they simply highlighted Cortez's view of the evidence.

More problematic, the phrase "indiscriminate attack" (or "attack indiscriminately") was potentially confusing. For example, an attack may be indiscriminate regarding the choice of victim, such as when an attacker intends to maim someone, does not care whom he or she maims, and chooses to maim the first person he or she encounters. Or an attack may be indiscriminate, in any number of ways, in its performance, such as when an attacker uses whatever weapon happens to be readily available or injures whatever part of the victim's body happens to come within reach. Or, as Cortez would argue, an attack may be indiscriminate in its intended results, such as when an attacker injures a victim without necessarily intending to permanently disfigure or disable him. Only this last sense of "indiscriminate attack" makes the requested pinpoint instructions an accurate statement of the law, as the cases from which they are taken make clear. (See *People v. Assad*, *supra*, 189 Cal.App.4th at pp. 195-196; *People v. Park*, *supra*, 112 Cal.App.4th at pp. 69-72; see, e.g., *People v. Sears* (1965) 62 Cal.2d 737, 745 ["such evidence does no more than indicate an indiscriminate attack; it does not support the premise that defendant specifically intended to maim his victim"], overruled on another ground in *People v. Cahill* (1993) 5 Cal.4th 478, 510, fn. 17.) But without the clarification the context of those cases provides, the requested instructions

risked confusing jurors regarding the value of evidence showing an "indiscriminate attack." The trial court did not err in declining to give the requested pinpoint instructions.[2]

2. *The Unanimity Instruction*

In connection with the aggravated mayhem charge, Cortez also requested a unanimity instruction, CALCRIM No. 3500: "The People have presented evidence of more than one act to prove that the defendant committed this offense. You must not find the defendant guilty unless you all agree that the People have proved that the defendant committed at least one of these acts and you all agree on which act (he/she) committed." The trial court denied the request. Cortez argues this was prejudicial error, noting that in closing argument the prosecutor suggested "two portions" of the attack supported the charge of aggravated mayhem, the "drag" of the knife across Luis's torso and the stab wound to Luis's arm.

---

[2] For these reasons, the trial court did not, as Cortez contends, violate his due process right to present a complete defense when the court denied his request for the pinpoint instructions. (See *People v. Bolden* (2002) 29 Cal.4th 515, 558 [although "'in appropriate circumstances' a trial court may be required to give a requested jury instruction that pinpoints a defense theory of the case," a trial court need not give an instruction that is duplicative or argumentative]; see generally *People v. Rogers* (2006) 39 Cal.4th 826, 872 [citing cases "in which federal courts have held that a trial court's failure to give a requested instruction . . . embodying the defense theory of the case and around which the defendant had built his or her case" violated the federal Constitution and considering the possibility that failing to give a requested instruction on a lesser included offense "violated the defendant's due process right to present a complete defense"].)

"As a general rule, when violation of a criminal statute is charged and the evidence establishes several acts, any one of which could constitute the crime charged, either the state must select the particular act upon which it relied for the allegation of the information, or the jury must be instructed that it must agree unanimously upon which act to base a verdict of guilty. [Citation.] There are, however, several exceptions to this rule. For example, no unanimity instruction is required if the case falls within the continuous-course-of-conduct exception, which arises 'when the acts are so closely connected in time as to form part of one transaction' [citation], or 'when the statute contemplates a continuous course of conduct or a series of acts over a period of time.'" (*People v. Jennings* (2010) 50 Cal.4th 616, 679; see *People v. Hernandez* (2013) 217 Cal.App.4th 559, 573 ["a continuous course of conduct exists when the same actor performs the same type of conduct at the same place within a short period of time, such that a jury cannot reasonably distinguish different instances of conduct"]; *People v. Bui* (2011) 192 Cal.App.4th 1002, 1011 [the exception applies """"where the acts testified to are so closely related in time and place that the jurors reasonably must either accept or reject the victim's testimony in toto""""].)

The slice wound Cortez made across Luis's torso and the stab wound he made in Luis's arm were part of one continuous course of conduct—same actor, same victim, same weapon, same location on the property, same few seconds. That the prosecutor suggested two separate wounds provided evidence of Cortez's intent to maim Luis does not mean the wounds were not part of one transaction. (See *People v. Robbins* (1989) 209 Cal.App.3d 261, 266 [because the defendant's "attack on his victim was one prolonged assault, of which the individual blows and other indignities were inseparable components," the "trial court was not required to give" a unanimity instruction regarding great

bodily injury enhancements]; see also *People v. Bui*, *supra*, 192 Cal.App.4th at p. 1011 [where the defendant fired several shots within a few seconds of each other, "the prosecutor was not required to elect which among the shots she relied on for the attempted murder charge, and the trial court was not required to give the jury a unanimity instruction"].) Because the continuous-course-of-conduct exception applied, the trial court did not err in denying Cortez's request for a unanimity instruction.

C. *The Sentencing Minute Order and Abstract of Judgment Must Be Corrected*

We agree with the parties that in three respects the oral pronouncements of the trial court conflict with the sentencing minute order and abstract of judgment, which therefore must be corrected to conform with the oral pronouncement. (See *People v. Costella* (2017) 11 Cal.App.5th 1, 10 ["'[w]here there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls,'" and we should "direct the court to correct this error in the sentencing minutes and the abstract of judgment"].)

First, on the conviction for inflicting corporal injury on the mother of his child (count two), the trial court sentenced Cortez to a four-year term to run concurrently with the sentence for attempted premeditated murder (count one). The sentencing minute order and abstract of judgment, however, indicate the four-year term on count two is to run consecutively. Second, on the attempted murder conviction, the trial court imposed a consecutive, three-year, great bodily injury enhancement under section 12022.7, subdivision (e), because the offense occurred "under circumstances involving domestic violence." The sentencing minute order and abstract of judgment, however,

indicate the court imposed this enhancement under section 12022.7, subdivision (c), which concerns inflicting great bodily injury on a person 70 years of age or older. Third, the trial court imposed a life sentence for aggravated mayhem (count eight) to run concurrently with the sentence on the attempted murder conviction. The sentencing minute order and abstract of judgment, however, indicate the court stayed execution of the life sentence on count eight under section 654. The trial court must correct these errors.

In addition, the sentencing minute order and abstract of judgment must be corrected concerning the three-year sentence for dissuading a witness (count three) and the six-year sentence for child abuse (count five). The trial court ordered both sentences to run concurrently with the sentence on count one, and then stated both sentences would "be stayed pursuant to [section] 654."[3] But, as Cortez argues and the People concede, "when section 654 applies, the trial court cannot impose a concurrent sentence." (See *People v. Alford* (2010) 180 Cal.App.4th 1463, 1468 ["[i]mposition of concurrent sentences is not the correct method of implementing section 654, because a concurrent sentence is still punishment"].) Instead, the trial court must impose a sentence and stay execution of that sentence, so that "if the unstayed sentence is reversed, a valid sentence remains extant." (*People v. Alford*, at p. 1469.) Therefore, the sentencing minute order, which describes the stayed sentences on counts three and five as concurrent to the sentence on count one, must be corrected to state the court stayed execution of these sentences under section 654 without stating the court imposed concurrent sentences. Similarly, the abstract

---

[3] The trial court also later stated that the sentence on "count one, it's going to be life plus four; the others will be stayed."

of judgment, which states the court imposed but did not stay a concurrent sentence on count three, must be corrected to reflect that the court stayed execution of the sentence imposed on that count without stating the sentence is concurrent. (The abstract of judgment correctly indicates the court stayed execution of the sentence on count five without stating the sentence was concurrent.)

DISPOSITION

The judgment of conviction is affirmed. The matter is remanded with directions to correct the sentencing minute order and the abstract of judgment to reflect that (1) the sentence on count two is concurrent, not consecutive, to the sentence on count one; (2) the court imposed the three-year enhancement on count one under section 12022.7, subdivision (e), not section 12022.7, subdivision (c); and (3) the sentence on count eight is concurrent to the sentence on count one and not stayed. The trial court must also correct the sentencing minute order to omit describing the sentences imposed on counts three and five as concurrent, and correct the abstract of judgment so that execution of the sentence on count three is stayed and not concurrent. The trial court is also to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

SEGAL, J.

We concur:

ZELON, Acting P. J. FEUER, J.